

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

THOMAS FLEMING,)	
)	
Plaintiff,)	4:03cv3307
)	
vs.)	MEMORANDUM AND ORDER
)	
HAROLD W. CLARKE, et al.,)	
)	
Defendants.)	

This matter is before the court on filing no. 73, the Memorandum and Order entered by Senior District Judge Warren K. Urbom on September 6, 2005. In filing no. 73, Judge Urbom stated in pertinent part: "Magistrate Judge F. A. Gossett is requested to enter an Order Setting a Schedule for the Progression of this case to trial." Judge Urbom also stated that the plaintiff, Thomas Fleming, could move for appointment of counsel.

Because the plaintiff filed this case in August of 2003, and because the court attempts to try cases within fewer than three years of their filing date, the trial of this case shall take place by no later than July of 2006. The deadline for dispositive motions set in the court's previous Progression Order (filing no. 40) expired on December 15, 2004 and will not be extended. Therefore, the matters which remain to be scheduled include any additional discovery which the parties may need to conduct, trial preparation, and the pretrial conference.

In order to prepare a progression order, I would like to hear from both the plaintiff and counsel for the defendants by September 21, 2005, regarding the amount of additional time needed for discovery. I also request that the plaintiff indicate in writing by September 21, 2005, whether he does, or does not, wish to have counsel appointed to

assist him from this point on. Finally, if the plaintiff does not respond to this Memorandum and Order by September 21, 2005, I request that counsel for the Nebraska Department of Correctional Services (“DCS”) cause an appropriate DCS official with knowledge of the plaintiff’s condition to report to the court by September 27, 2005, regarding the plaintiff’s health¹, whether he has been returned to segregation, or whether some other impediment prevents him from responding to the court.

SO ORDERED.

DATED this 9TH day of September, 2005.

BY THE COURT:

s/ F.A. Gossett
United States Magistrate Judge

¹In his deposition, the plaintiff mentioned that he is awaiting a liver transplant.